

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JONATHON JESUS ESTRADA,
HANNAH ROSE ESTRADA, and CARLOS
MIGUEL ESTRADA, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JESUS ESTRADA,

Respondent-Appellant,

and

MICHELLE ESTRADA,

Respondent.

UNPUBLISHED

January 29, 2008

No. 277426

Branch Circuit Court

Family Division

LC No. 06-003415-NA

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(ii) and (j). We affirm.

Respondent father's children were removed from the home he shared with respondent mother after respondent mother telephoned petitioner pleading for the children to be removed because she could not handle them. Respondent father worked from 3:00 p.m. to 12:00 a.m. and was not aware of respondent mother's call, but he agreed to the removal rather than keep the children himself. Petitioner had offered the family numerous services in the past in an attempt to keep the children at home and, after the removal, offered supervised visitation and a variety of counseling for the family. Respondent parents did not follow through with counseling, and the trial court found that respondent mother was emotionally abusive to the children. While there were no concerns that respondent father would abuse the children, the trial court found that he did not step forward to provide a home for them at any time because he claimed his work schedule would not allow it.

On appeal, respondent father argues that his trial counsel was ineffective. Effective assistance of counsel claims in parental rights termination cases are analogous to effective assistance of counsel claims in criminal cases. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Effective assistance of counsel is presumed and a respondent bears a heavy burden of establishing otherwise. To establish ineffective assistance of counsel, a respondent must show that (1) counsel's failure fell below an objective standard of reasonableness under prevailing professional norms, (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) the result of the proceedings was fundamentally unfair or unreliable. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Respondent father argues that his counsel was ineffective for his general representation and not for specific errors. Specifically, respondent father argues that his counsel was ineffective for failing to vigorously defend him where trial counsel failed to question witnesses thoroughly, failed to object to irrelevant testimony, and failed to argue whole-heartedly for respondent father at review hearings and in the closing argument at the termination trial. First, regarding the cross-examination of petitioner's witnesses, respondent father does not specify what questions counsel should have asked and what testimony would have been elicited that would have changed the result of the proceedings. Respondent father cannot simply state his position and leave it to this Court to rationalize and find support for his claims. *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2002). On the record before this Court, there is no obvious error in trial counsel's cross-examination of any witness.

Next, the testimony challenged on grounds of relevancy concerned events occurring in the summer of 2006, after the children were removed. Respondent father argues that the evidence was inadmissible because the trial court had previously found that progress was made. Evidence regarding respondent father's actions in the months following the removal of his children was relevant to whether respondent father rectified the conditions leading to adjudication and whether the children would be harmed if returned to respondent father. The trial court's earlier finding that progress was made does not render evidence regarding later occurrences irrelevant. Because trial counsel did not err in failing to object to this evidence, this alleged mistake does not support a finding of ineffective assistance of counsel.

Next, respondent father argues that his trial counsel half-heartedly argued on his behalf at review hearings and in his closing argument at the termination trial. At review hearings, trial counsel argued for return of the children and later for overnight weekend visitation. In his closing argument at the termination trial, counsel argued against termination. While trial counsel may have used words such as "I hope" and "I guess," rather than a more persuasive choice of words, and his arguments were brief, there is no indication that lengthier argument or stronger word choices would have changed the trial court's decision.

Respondent father finally argues that trial counsel was ineffective for failing to seek an interpreter for respondent father's testimony at the termination trial. Because respondent did not move for an evidentiary hearing or new trial, our review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). While it is apparent from his testimony that English is not respondent father's first language, respondent father appropriately answered questions posed to him and did not appear to have any problems understanding the

proceedings. Therefore, the record does not establish that respondent father required the services of an interpreter.

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood